UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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ARMANDO CUEVAS and HEATHER BURLETTE,

Plaintiffs,

v.

EL DORADO COUNTY SHERIFF'S OFFICE, et al.,

Defendants.

NO. 2: 04-CV-2092-MCE-GGH

MEMORANDUM AND ORDER

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Through the present action, Plaintiffs Armando Cuevas ("Cuevas") and Heather Burlette ("Burlette") claim that Defendants El Dorado County Sheriff's Office ("Defendant El Dorado County"), Sheriff Jeff Neves, Officer Brian Golmitz ("Defendant Supervisors") Officer Jon De Roco, Officer Richard Horn, Officer Michael Cook, and Officer Christopher Starr ("Defendant Officers")(collectively "Defendants") violated their civil rights during the course of entering and searching Plaintiffs' home. Specifically, Plaintiffs allege federal claims

under the Civil Rights Act of 1871 ("Section 1983"), 42 U.S.C. § 1983, including illegal search and seizure and violation of due process. In addition, Plaintiffs raise state law claims of negligence, assault and battery, abuse of criminal process, false arrest and false imprisonment.

All Defendants now seek summary judgment or in the alternative summary adjudication on Plaintiffs' claims. For the reasons set forth below, those motions are granted and Plaintiffs' state law claims are remanded to the state court.[1]

BACKGROUND

On the evening of February 25, 2004, Plaintiffs Cuevas and Burlette were working in the office of their rented home at 464 Capella Drive in Diamond Springs, California. Sometime around nightfall on that date, parole officer Jon De Roco together with Deputy Sheriff Christopher Starr approached the front door of the Capella Drive residence to conduct a "knock-and-talk" with an absconded parolee by the name of Randy Witmore ("Witmore"), they believed, resided therein.[2] While Officers De Roco and Starr approached the front of the residence, Deputy Sheriff Officers Horn and Cook entered the back yard to guard the rear entry. Upon reaching the front door, De Roco knocked summoning Cuevas.

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[1]Because oral argument will not be of material assistance, the Court orders this matter submitted on the briefs. E.D. Cal. Local Rule 78-230(h).

[2]Although currently occupied by Plaintiffs, the Capella Drive residence was also the last known address of parolee at large, Randy Witmore.

As Cuevas answered the door, Burlette remained in an adjacent room of the home. The subsequent events are hotly contested. However, considering only Plaintiffs' version of events as the Court must, De Roco called out the name "Randy". Cuevas Depo. 90:20-22. Simultaneously with asking Cuevas whether he was Randy, De Roco pushed forward on the door. Cuevas Depo. 91:14-20. At that point, Cuevas said nothing but attempted to close the door on Defendant Officers. Cuevas Depo. 91:1-25. Cuevas concedes that, without clarifying his identity or otherwise explaining his attempt to close the door, he struck De Roco in the left side of the head with the door causing Roco to suffer a black eye and chipped teeth. De Roco together with Starr immediately forced their way into the residence and wrestled Cuevas to the floor handcuffing him and directing Burlette to remain in plain view. Upon hearing the commotion, Defendants Horn and Cook also entered the residence from the rear. Defendant Officers then conducted a warrantless search of the property and ultimately arrested Cuevas for battery on a peace officer under California Penal Code § 243(c)(2). Ultimately, that charge against Cuevas was dropped and no charges were brought against Burlette.

As a result of the foregoing events, Plaintiffs filed this action alleging numerous violations of their constitutional and statutory rights including the right to be free from unreasonable search and seizure, negligence, assault and battery, abuse of criminal process, false arrest and false imprisonment, and a deprivation of their right to due process.

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STANDARD

The Federal Rules of Civil Procedure provide for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). One of the principal purposes of Rule 56 is to dispose of factually unsupported claims or defenses. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).

Rule 56 also allows a court to grant summary adjudication on part of a claim or defense. *See* Fed. R. Civ. P. 56(a) ("A party seeking to recover upon a claim ... may ... move ... for a summary judgment in the party's favor upon all or any part thereof."); see also Allstate Ins. Co. v. Madan, 889 F. Supp. 374, 378-79 (C.D. Cal. 1995); France Stone Co., Inc. v. Charter Township of Monroe, 790 F. Supp. 707, 710 (E.D. Mich. 1992).

The standard that applies to a motion for summary adjudication is the same as that which applies to a motion for summary judgment. See Fed. R. Civ. P. 56(a), 56(c); Mora v. ChemTronics, 16 F. Supp. 2d. 1192, 1200 (S.D. Cal. 1998).

> Under summary judgment practice, the moving party always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact.

Celotex Corp. v. Catrett, 477 U.S. at 323(quoting Rule 56(c)).

If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-87 (1986); First Nat'l Bank v. Cities Serv. Co., 391 U.S. 253, 288-89 (1968).

In attempting to establish the existence of this factual dispute, the opposing party must tender evidence of specific facts in the form of affidavits, and/or admissible discovery material, in support of its contention that the dispute exists. Fed. R. Civ. P. 56(e). The opposing party must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome of the suit under the governing law, and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 251-52 (1986); Owens v. Local No. 169, Assoc. of Western Pulp and Paper Workers, 971 F.2d 347, 355 (9th Cir. 1987). Stated another way, "before the evidence is left to the jury, there is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury could properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed." Anderson, 477 U.S. at 251 (quoting Improvement Co. v. Munson, 14 Wall. 442, 448, 20 L.Ed. 867 (1872)). As the Supreme Court explained, "[w]hen the moving party has carried its burden under Rule 56(c), its opponent must do more that simply show that there is some metaphysical doubt as to the material facts .... Where the record

taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita, 475 U.S. at 586-87.

In resolving a summary judgment motion, the evidence of the opposing party is to be believed, and all reasonable inferences that may be drawn from the facts placed before the court must be drawn in favor of the opposing party. Anderson, 477 U.S. at 255. Nevertheless, inferences are not drawn out of the air, and it is the opposing party's obligation to produce a factual predicate from which the inference may be drawn. Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d 898 (9th Cir. 1987).

ANALYSIS

Plaintiffs generally aver that Defendants violated a number of their constitutional rights including their Fourth Amendment right to be free from unreasonable search and seizure as well as their right to due process and their right to be free from self-incrimination under the Fifth Amendment of the United States Constitution. As a result of harms allegedly suffered, they seek recovery under 42 U.S.C. § 1983.

Defendants rebut that they did not violate Plaintiffs' constitutional rights and that, to the extent the Court finds otherwise, they are protected by qualified immunity.

The Ninth Circuit recently addressed a case factually on all fours with the case presently before this Court. In Motley v. Parks, 2005 U.S. App. LEXIS 29008 (9th Cir. 2005)(en banc), the

plaintiff was the resident of an apartment that was also the last known residence of a parolee at large. Defendant peace officers went to search what they believed to be the parolee's residence but what was, in fact, plaintiffs principal place of residence. Just as in the case at bar, two officers proceeded to the rear of the apartment while two other officers went to the front door.

Ultimately, plaintiff's apartment was searched without her consent and she brought suit alleging generally the same constitutional violations as Plaintiffs are alleging herein. The Ninth Circuit concluded that the defendants were entitled to qualified immunity and affirmed the lower court's dismissal of plaintiff's claims in their entirety. That en banc decision clarified a number of issues in the Ninth Circuit regarding parole related searches and is instructive in the case at bar.

I. Qualified Immunity

A private right of action pursuant to 42 U.S.C. § 1983 exists against law enforcement officers who, acting under the color of authority, violate federal constitutional or statutory rights of an individual. See Wilson v. Layne, 526 U.S. 603, 609, 119 S. Ct. 1692, 143 L. Ed. 2d 818 (1999). The defense of qualified immunity, however, shields an officer from trial when the officer "reasonably mis-apprehends the law governing the circumstances she confronted," even if the officer's conduct was constitutionally deficient. Brosseau v. Haugen, 543 U.S. 194, 125 S. Ct. 596, 599, 160 L. Ed. 2d 583 (2004)(per curiam).

Where, as here, some or all of the defendants seek qualified

immunity, a ruling on that issue should be made early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive. Saucier v. Katz, 533 U.S. 194, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001). In Saucier, the Supreme Court laid out the framework for determining an officer's entitlement to qualified immunity. The threshold inquiry requires a court to ask, "taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" Id. at 201. The inquiry ends at this stage if no constitutional right is found to have been violated. Id.

If, on the other hand, the plaintiff's allegations do make out a constitutional injury, the court must then determine whether that constitutional right was clearly established at the time of the violation. Id. If the right was not clearly established, the qualified immunity doctrine shields the officer from further litigation. Id. Finally, even if the violated right was clearly established, the Saucier court recognized that it may be difficult for a police officer fully to appreciate how the legal constraints apply to the specific situation he or she faces. Under such a circumstance, "if the officer's mistake as to what the law requires is reasonable, . . . the officer is entitled to the immunity defense." Id. at 205.

As noted above, the threshold inquiry requires this Court to ask, taken in the light most favorable to Plaintiffs, do the facts alleged show the Defendants' conduct violated a constitutional right?

1. Violation of Fourth Amendment

A. Illegal Search

A reasonable parole search conducted by law enforcement officers without a warrant does not run afoul of the Fourth Amendment. Motley, 2005 U.S. App. LEXIS 29008 at *16 (quoting Griffin v. Wisconsin, 483 U.S. 868, 872-75, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987)). A reasonable parole search exists when law enforcement officers have probable cause to believe that the parolee is a resident of the house to be searched. Motley, 2005 U.S. App. LEXIS 29008 at *19. "In dealing with probable cause, ... as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." Id. at *24-25 (quoting Brinegar v. United States, 338 U.S. 160, 175, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949)). Accordingly, if Defendant Officers in this instance had probable cause to believe the Capella Drive residence was, in fact, Witmore's residence, no constitutional violation will be found and Plaintiffs' claim must fail.

Plaintiffs moved into the Capella Drive residence five months prior to this incident. Undisp. Fact 2. The Capella Drive residence was the only known address and emergency contact address for Witmore, who was released from prison January 16, 2004. Undisp. Fact 4. On the day of the incident, De Roco determined that Witmore was not in custody by referring to the Department of Corrections' database, OPUS, and then telephoning the releasing institution. De Roco Depo. 131:17-19; Undisp. Fact

7. Horn then checked the ACIS local law enforcement database which confirmed at least one law enforcement contact in 2002 with Witmore at the Capella Drive residence. Undisp. Fact 13.

In assessing whether the foregoing steps were sufficient to constitute probable cause, the Court again turns to the Motley decision. In that case, the Ninth Circuit concluded that it was reasonable for officers to rely on information of the parolee's whereabouts obtained a week in advance of the search. This is in stark contrast to the present case where the information regarding Witmore's whereabouts was verified on the very day of the search. In addition, the Motley court concluded that the officers had probable cause to search despite the fact that the parolee in the Motley case was in custody at the time of the search, a fact which could have easily been ascertained in advance. Here, Witmore was not in custody and, in fact, Defendant Officers were in search of him on the night they approached the Capella Drive residence.

In light of the foregoing, this Court concludes that Defendant Officers had probable cause to believe they were, in fact, at Witmore's residence. They did not rush the residence blindly but rather, they confirmed the Capella Drive residence as Witmore's last known address and emergency contact address through at least two police databases and Witmore's parolee interview sheet. Undisp. Facts 4, 7, 13. In addition, Defendant Officers were certainly reasonable in assuming they had the correct residence when Cuevas responded to De Roco's question of whether he was "Randy" by attempting to close the door and then striking De Roco with enough force to give him a black eye and

chip his teeth. Given that Defendant officers had probable cause to believe Witmore resided at the Capella Drive residence, they acted lawfully in entering and searching Plaintiffs' residence.

In addition, because Defendant officers had probable cause to believe they were at the correct residence, the Court finds that they were entitled to maintain that belief until presented with convincing evidence that the information they had relied upon was incorrect. Motley, 2005 U.S. App. LEXIS 29008 at *26. No such evidence was forthcoming from Plaintiffs and, in fact, Defendant Officers' belief was likely bolstered by Cuevas' decision not to address De Roco and, instead, to attempt to close the door followed by striking De Roco in the head.

In sum, the Officers required probable cause to believe that the Capella Drive residence was Witmore's, and they met that burden. Accordingly, no constitutional right is found to have been violated and Defendant Officers' Motion for Summary Judgment as to Plaintiffs' claim of illegal search in violation of the Fourth Amendment of the United States Constitution is granted.[3]

B. Illegal Seizure

Again, Cuevas alleges that his Fourth Amendment rights were violated in that he was illegally seized by Defendants. Cuevas avers that his warrantless arrest is constitutionally infirm because the Defendant Officers were objectively unreasonable in

[3]The Court need not address the constitutional issues raised by a suspicionless search as the Defendants had a particularized suspicion that Witmore was a parole violator because he had failed to report. De Roco Depo. 21:18-19.

seizing his person. He further explains that he should not have been arrested because his battery of De Roco was solely a result of his mistaken belief that De Roco was a home invader. Plf.s' Opp. 11:13-14. Since the ultimate charge against Cuevas was battery on a peace officer, Cuevas claims he cannot be guilty of that crime making his arrest constitutionally unreasonable.

The law on this issue is patently clear. A warrantless arrest by a law enforcement officer is reasonable under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed. Devenpeck v. Alford, 543 U.S. 146, 152, 125 S. Ct. 588, 160 L. Ed. 2d 537 (U.S. 2004)(citing United States v. Watson, 423 U.S. 411, 417-424, 46 L. Ed. 2d 598, 96 S. Ct. 820 (1976). The arresting officer's subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause. Devenpeck, 543 U.S. at 153. Indeed, a peace officer may arrest an individual for any minor criminal offense where supported by probable cause even if the offense is not punishable by confinement. See generally Atwater v. City of Lago Vista, 532 U.S. 318, 121 S. Ct. 1536, 149 L. Ed. 2d 549 (2001). Further, whether probable cause exists depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at the time of the arrest. Devenpeck, 543 U.S. at 153. Consequently, if Cuevas engaged in any activity that appeared to violate California's Penal Code, probable cause existed whether or not that same crime was the ultimate basis for his arrest.

Here, the uncontroverted facts establish that Cuevas struck De Roco almost immediately after answering the door. The use of

force or violence upon *any* person, whether or not a peace officer, is a violation of California Penal Code section 243 and would have given Defendant Officers probable cause to arrest Cuevas.[4] Accordingly, Defendant Officers' motion for summary judgment as to Cuevas' claim of illegal seizure in violation of the Fourth Amendment of the United States Constitution is granted.

Plaintiff Burlette concedes that she was not touched, threatened, arrested, handcuffed or cited on the evening of the incident. Undisp. Facts 1 - 34, 38 - 43. Although Burlette was questioned, mere police questioning does not constitute a seizure for purposes of the Fourth Amendment. See Florida v. Bostick, 501 U.S. 429, 434, 115 L. Ed. 2d 389, 111 S. Ct. 2382 (1991). The salient inquiry is whether a reasonable person would feel free "to disregard the police and go about his business." Id. Burlette conceded that, in fact, there was no effort on the part of Defendant Officers to subdue or restrain her movements. In fact, immediately upon hearing the struggle between Cuevas and Defendants De Roco and Starr in the entry of the home, Burlette went to the telephone in another room and dialed 911. She then returned to where Cuevas was. Later, she was asked to retrieve Cuevas' wallet and, again, left the presence of Defendant Officers without issue. It is clear from Plaintiffs' version of the facts that Burlette freely moved about the residence throughout the course of the incident. Such free motion does not

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[4]A battery is any willful and unlawful use of force or violence upon the person of another. Cal. Pen. Code § 242 (Deerings, 2005).

give rise to a seizure for purposes of the Fourth Amendment. Accordingly, summary judgment as to Plaintiff Burlette's claim of an illegal seizure is, hereby, granted in favor of Defendant Officers.

C. Violation of Fifth Amendment

1. Due Process

In their Complaint, Plaintiffs allege, *inter alia*, that Defendants deprived them of protections under the Fourth, Fifth, and Fourteenth Amendments. Plaintiffs are relying on 42 U.S.C. § 1983 to support their claim that Defendants deprived them of their due process rights under the Fifth Amendment. Cuevas essentially argues that Defendants deprived him of due process by conducting a warrantless arrest followed by confinement in jail.

Ordinarily, due process of law requires notice and an opportunity for some kind of hearing prior to the deprivation of a significant property or liberty interest. See Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 19, 56 L. Ed. 2d 30, 98 S. Ct. 1554 (1978). Summary governmental action taken in emergencies and designed to protect the public health, safety and general welfare does not violate due process. Hodel v. Virginia Surface Mining & Reclamation Ass'n, 452 U.S. 264, 299-300, 69 L. Ed. 2d 1, 101 S. Ct. 2352 (1981). Government officials need to act promptly and decisively when they perceive an emergency, and therefore, no pre-deprivation process is due. As noted above, if an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he

may, without violating constitutional principles, arrest the offender. Atwater, 532 U.S. at 354 (2001).

Defendants are entitled to qualified immunity if there is no constitutional violation. Saucier, 533 U.S. at 201. Plaintiffs concede that Cuevas struck De Roco in the face blackening his eye and chipping his teeth. This battery on Defendant De Roco gave Defendant Officers probable cause to believe that Cuevas had violated California Penal Code section 243(c)(2). Since probable cause has been established, no constitutional right has been violated ending the inquiry. Accordingly, Defendant Officers' Motion for Summary Judgment on Plaintiffs' claim for deprivation of due process pursuant to the Fifth Amendment of the United States Constitution is granted.

2. Self-Incrimination

Plaintiffs allege that their right to be free from self-incrimination under the Fifth Amendment of the United States Constitution was violated when they were coerced to provide a statement regarding the incident of February 25, 2004. Specifically, Plaintiffs claim the submission and acceptance of their citizen's complaint was conditioned upon their agreement to be interviewed regarding said incident. For purposes of this summary judgment motion, the Court assumes that Plaintiffs were, in fact, required to give a statement regarding the incident before their civil complaint would be received by Defendants.

Again, the law is patently clear on this issue. Civil litigants do not state a valid Section 1983 claim for a violation

of the privilege against self-incrimination, under the Federal Constitution's Fifth Amendment as made applicable to the states by the Fourteenth Amendment, where (1) the litigant has never been charged with any crime related to the altercation; and (2) the litigant's answers to an interrogation had never been used against them in any subsequent criminal prosecution. See Chavez v. Martinez, 538 U.S. 760, 123 S. Ct. 1994, 155 L. Ed. 2d 984 (2003). Here, as in Chavez, Plaintiffs have never been charged with any crime related to the February 25, 2004, altercation nor have any of the answers they provided in the later interrogation been used against them in any criminal prosecution. Accordingly, no viable Section 1983 action exists.

Summary judgment on Plaintiffs' claim for a violation of their Fifth Amendment rights is warranted and is, hereby, granted in favor of Defendants.

II. Claims Against Defendants Golmitz and Neves

With respect to Plaintiffs' claim that Officer Golmitz and Sheriff Neves are liable as supervising officers for their alleged injuries, that claim too must fail. A supervisor can be liable under Section 1983 if he "set[s] in motion a series of acts by others . . ., which he knew or reasonably should have known, would cause others to inflict the constitutional injury." Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991)(internal quotation marks and brackets omitted). "Absent some indication to a supervisor that an investigation was inadequate or incompetent, supervisors are not obliged either to

undertake *de novo* investigations or to cross examine subordinates reasonably believed to be competent as to whether their investigations were negligent." Motley, 2005 U.S. App. LEXIS 29008 (quoting Cecere v. City of New York, 967 F.2d 826, 829 (2d Cir. 1992). The record clearly shows that neither Golmitz nor Neves had any reason to believe that the investigation regarding Witmore's last known address and parole status were inadequate or incompetent.

Accordingly, Defendant Supervisors' Motion for Summary Judgment as to Plaintiffs' claims is granted.

III. Claims Against Defendant El Dorado County

In addition to the foregoing Defendants, Plaintiffs name El Dorado County as a Defendant in this litigation. Generally, a plaintiff may not sue a local government agency under Section 1983 for an injury inflicted solely by its employees or agents. See Monell v. Dept. of Soc. Servs., 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). Rather, a plaintiff must prove that execution of a government's policy or custom inflicted the injury. See id.

The alleged injury of which Plaintiffs complain was inflicted solely by El Dorado County's employees. Consequently, to sustain this Section 1983 action against El Dorado County, Plaintiffs must establish a direct causal nexus between one of its policies and Plaintiffs' alleged injuries. To that end, Plaintiffs argue that El Dorado County's policy of permitting law enforcement agencies, other than the California Department of

Corrections, Parole and Community Services Division ("Parole Division"), to assist with the search for and apprehension of parolees inflicted their alleged injury.

The Court fails to see how this policy directly inflicted Plaintiffs' alleged injury. Had all the officers that entered Plaintiffs' home on that February night been from the Parole Division rather than from both the Parole Division and the El Dorado County Sheriff's Department, Plaintiffs would nonetheless have suffered the very injury they now complain of. The existence of officers from multiple agencies did not cause the alleged constitutional injury. Rather, if anything, it was the unwelcome intrusion by Defendant Officers that caused the alleged injury. Because the policy of permitting law enforcement agencies to work in tandem in apprehending parole violators did not cause Plaintiffs' alleged injury, Plaintiffs' claim against Defendant El Dorado County must fail.

Defendant El Dorado County's Motion for Summary Judgment is granted.

IV. State Law Claims

Plaintiffs have alleged a number of state law causes of action including negligence, assault and battery, abuse of criminal process, false arrest and false imprisonment. The district courts may decline to exercise supplemental jurisdiction over state claims if it has dismissed all claims over which it has original jurisdiction. 28 U.S.C. § 1367. As is set forth above, the Court has concluded that none of Plaintiffs' federal

causes of action survive summary judgment. Consequently, the Court elects not to exercise supplemental jurisdiction and, hereby, remands the remaining state law causes of action to the state court for final adjudication.

V. Motion for Leave of Court to Disclose Expert Witnesses

Simultaneously with Defendants' motion for summary judgment, Plaintiffs filed a motion for leave of court to disclose expert witnesses. Because the Court has summarily adjudicated all federal claims in favor of Defendants and has remanded Plaintiffs' remaining state law claims to state court, Plaintiffs' motion for leave of this Court is moot.

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CONCLUSION

For the reasons set forth fully above, Plaintiffs claims for violation of their constitutional rights including their right to be free from unreasonable search and seizure under the Fourth Amendment as well as their right to due process and their right to be free from self-incrimination under the Fifth Amendment are summarily adjudicated in favor of Defendants. Plaintiffs remaining state law claims for negligence, assault and battery, abuse of criminal process, false arrest and false imprisonment are dismissed without prejudice.

IT IS SO ORDERED.

DATED: February 13, 2006

MORRISON C. ENGLAND, JR
UNITED STATES DISTRICT JUDGE